IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3958 of 2006
Date of Decision: 7.11.2006

Municipal Council, Bawal ...Appellant

Versus

Babu Lal and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Jagdish Manchanda, Advocate, for the appellant.

JUDGMENT

The defendant-Municipal Council is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the suit for permanent injunction filed by the plaintiff-respondents, was decreed.

It is the case of the plaintiffs that they have purchased the land measuring 20 kanals 4 marlas vide registered sale deed dated 10.8.1988 and are in possession of another 1 kanal of land towards western-southern side thereof. The defendant alleged in the written statement that the said 1 kanal of land was in fact, owned by one Satbir Singh. Keeping in view the said assertion of the defendant, the plaintiffs have purchased the said 1 kanal of land from Satbir Singh.

The learned trial Court has appointed Tehsildar as Local Commissioner to demarcate the land owned by the plaintiffs. Said Tehsildar

has given his demarcation report Exhibit PF accompanied by the site plan Exhibit PG. The said report shows that the appellant has encroached upon plaintiffs' land measuring 3 karams as shown in site plan Exhibit PG by way of carving out a passage thereon. It has been found by the learned first Appellate Court that the Local Commissioner was not cross-examined and the demarcation carried out at the spot was not disputed by the appellant. On the basis of the said report, it was found that the Municipal Council has encroached upon a part of the land of the plaintiffs without acquiring the same and thus, the Municipal Council is in unauthorised possession of the encroached portion. Resultantly, the suit was decreed directing the appellant to vacate the encroached portion within a period of four months. During the said period, the Municipal Council was given liberty to acquire the same in accordance with law.

Learned counsel for the appellant has vehemently argued that the land is being used as a passage since long and when the road was being paved the plaintiffs have filed the suit for injunction. The plaintiffs are claiming their title over the suit land by virtue of a sale during the pendency of the suit and therefore, the plaintiffs are not entitled to any injunction.

However, I do not find any merit in the said argument raised by the learned counsel for the appellant. It was the stand of the defendant in the written statement that the land measuring 1 kanal on the western-southern side was owned by one Satbir Singh. The plaintiffs have purchased the said 1 kanal from Satbir Singh. Therefore, the defendants cannot deny the title of the plaintiffs over such land. The Tehsildar was appointed as Local Commissioner to demarcate the suit land. Such demarcation has been carried out in accordance with law and in the presence of the representative

of the Municipal Council. The Tehsildar was not cross-examined in respect of the process of demarcation.

Therefore, I do not find any patent illegality or irregularity in the finding that there is encroachment on the land of the plaintiffs by the appellant. Thus, I do not find that any substantial question of law arises for consideration by this Court. Hence, the present appeal is dismissed.

However, the appellant is granted six months' time to vacate the suit land from today or to acquire the same as per the liberty granted by the learned first Appellate Court.

07-11-2006 (HEMANT GUPTA)
ds JUDGE